

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DWAYNE SMITH,

Plaintiff,

CIVIL ACTION NO. 05-CV-70296-DT

VS.

DISTRICT JUDGE GERALD E. ROSEN

JOHN WATKINS,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

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OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR ESTOPPEL

This is a civil rights action filed by Plaintiff Smith, a Michigan state prisoner, alleging that Detroit police officers used excessive force against him and other claims. Before the Court is Plaintiff's Motion for Estoppel filed on May 9, 2007. (Docket no. 37). Plaintiff states in the motion that he does not have an understanding of the law and is having a difficult time with the Court's instructions. The Court dispenses with oral argument pursuant to E.D. Mich. L.R. 7.1(e). All pretrial matters have been referred to the undersigned for decision. (Docket no. 11). Plaintiff apparently failed to serve a copy of the motion on Defendant's counsel. Although the time for Defendant to respond has not expired, given that no service was effected the Court sees no need to delay this matter until after the response time has expired. This matter is therefore ready for ruling.

There are several defects in Plaintiff's motion. First, it does not contain a certificate of service on the opposing party. *See* Fed. R. Civ. P. 5(d). Petitioner has been warned several times before that he must serve all papers filed with the Court on Defendant Watkins or his legal counsel. Plaintiff's certificate of service states that he served the Clerk of Court. It is the opposing party's counsel that should have been served. The Court previously advised Plaintiff that any paper not containing a

certificate of service would be disregarded. (Docket no. 10). Therefore, this motion should be disregarded because it does not contain a proper certificate of service.

Moreover, the nature of the relief sought is not apparent from the motion. Plaintiff may be requesting that the Court appoint counsel to assist him. However, the Court has already denied Plaintiff's motion for the appointment of counsel. (Docket no. 29). There is no showing of a change in circumstances that would result in a different decision now on the issue.

Accordingly, for all of these reasons, Plaintiff's Motion for Estoppel will be denied.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Estoppel (docket no. 37) is **DENIED**.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: May 15, 2007

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Opinion and Order was served upon Dwayne Smith and Counsel of Record on this date.

Dated: May 15, 2007

s/ Lisa C. Bartlett
Courtroom Deputy